

DEC 11 2006



COUNTY OF PLACER
Community Development Resource Agency

John Marin, Agency Director

PLANNING

Michael J. Johnson
Planning Director

MEMORANDUM

TO: Honorable Board of Supervisors

FROM: Michael Johnson, Planning Director

DATE: December 19, 2006

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN PLACER COUNTY AND YUBA COUNTY REGARDING THE CEMEX (Formerly PATTERSON SAND & GRAVEL) MINE EXPANSION PROJECT

SUMMARY / ACTION REQUESTED:

The Planning Department recommends that the Board of Supervisors enter into the Memorandum of Understanding designating Placer County as the California Environmental Quality Act and Permitting Lead Agency for the Cemex mine expansion project in Yuba County as set forth in Exhibit B.

BACKGROUND:

CEMEX Construction Materials, L.P. (formerly Patterson Sand and Gravel Company) is processing a new Conditional Use Permit with the County to expand its current operation by approximately 448 acres, and extending its mining activities beyond the currently permitted timeframe. Most of the expansion area is within Placer County (271 acres). However, part of the proposed expansion area (177 acres) is within Yuba County.

DISCUSSION:

In order to commence mining in the expansion area, the applicant must obtain approval of a Conditional Use Permit (CUP), Reclamation Plan (RP) and Financial Assurance (FA) to comply with Placer County and Yuba County requirements and the requirements of the Surface Mining and Reclamation Act of 1975, Cal. Public Resources Code §§2710 et seq. (SMARA). The project is within the jurisdiction of Placer County for a CUP, RP, and FA; within the jurisdiction of Yuba County for a CUP; and within the jurisdiction of the California State Mining and Geology Board (SMGB) for an RP and FA.

The CUP, RP and FA permitting process also requires compliance with the California Environmental Quality Act (CEQA - Public Resources Code §§21050 et seq). Under the CEQA Guidelines, where two or more public agencies have jurisdiction over a project subject to CEQA review, the public agency "with the greatest responsibility for supervising or approving the project as a whole" shall be designated as the Lead Agency. (CEQA Guidelines 14 CCR Section 15051(b).) Placer County is already acting as the CEQA Lead Agency and released a Draft EIR in November 2004. In addition, where a proposed surface mining operation is within the jurisdiction of two or more public agencies and mining is a permitted use within such agencies' jurisdiction, SMARA allows for the designation of one of these public agencies to serve as the Lead Agency under SMARA for consideration of the project. (Pub. Res. Code §2771.)

Because the expansion area is located in both Placer County and Yuba County, the question arose regarding which agency should act as lead for the project pursuant to SMARA, CEQA, and the permitting process. In order to be as efficient as possible, the applicant proposed that Placer County assume the Lead role to avoid the unnecessary delay and duplication of effort required by permitting the project independently in both counties. Because the California State Mining & Geology Board (SMGB) determined that Yuba County was not properly implementing SMARA, the SMGB assumed Lead Agency powers from Yuba County for the administration and enforcement of SMARA except for permitting activities. In August 2004, the SMGB and Placer County entered into a MOU giving the Lead Agency designation for SMARA and CEQA review to Placer County.

Yuba County has agreed to grant Placer County authority to issue a Conditional Use Permit for the whole of the project area in both counties, as well as act as the CEQA Lead Agency for the entire project. The Yuba County Board of Supervisors unanimously adopted the MOU between Placer County and Yuba County on December 20, 2005. The MOU underwent several minor revisions prior to Yuba County's adoption of the MOU, with the only substantial modification being the addition of a standard indemnity clause insisted upon by both Placer and Yuba counties. Staff supports this proposal, because Placer County is already the Lead Agency under CEQA for the Placer County portion of the expansion project, and it would be more practical if Placer County also managed the CEQA and permitting process for the proposed project in Yuba County, to assure that the project applicant meets statutory and discretionary permit requirements. The Planning Department has staff available to oversee this work.

RECOMMENDATION:

The Planning Department recommends that the Board of Supervisors enter into the Memorandum of Understanding designating Placer County as the California Environmental Quality Act and Permitting Lead Agency for the Cemex mine expansion project in Yuba County as set forth in Exhibit B.

Respectfully submitted,

MICHAEL J. JOHNSON, AICP
Planning Director

EXHIBITS:

- Exhibit A - Approved Memorandum of Understanding between Placer County and the State Mining and Geology Board, August 2004
- Exhibit B - Proposed Memorandum of Understanding between Placer County and Yuba County regarding Lead Agency Designation

Copies sent by Planning:

- Michael Johnson - Planning Director
- Paul Thompson - Planning Department
- Christiana Darlington - County Counsel's Office
- Mike Foster - Public Works Department
- Dana Wiyninger - Environmental Health Services
- Brent Backus - Air Pollution Control District
- Jack Blanton - Cemex
- Patrick Mitchell - Attorney, Downey Brand, 3001 Douglas Blvd., Ste. 360, Roseville, CA 95661
- Stephen Testa - State Mining and Geology Board
- Braiden Chadwick - Attorney, Downey Brand, 3001 Douglas Blvd., Ste. 360, Roseville, CA 95661
- Yuba County Department of Community Development

COURTESY COPY
State Mining and Geology Board

MEMORANDUM OF UNDERSTANDING
BETWEEN
PLACER COUNTY, CALIFORNIA and
the CALIFORNIA STATE MINING & GEOLOGY BOARD
REGARDING LEAD AGENCY DESIGNATION

This document constitutes an Agreement ("Agreement") between the COUNTY OF PLACER, California and the CALIFORNIA STATE MINING & GEOLOGY BOARD ("SMGB").

RECITALS:

A. Patterson Sand & Gravel Company ("Applicant") currently operates a 436 acre sand and gravel mine ("Mine") located in Placer County which it plans to expand to cover an additional 448 acres ("Expansion Area"). Of the Expansion Area, 177 acres are located within Yuba County, while 271 acres are located within Placer County. The planned expansion is referred to herein as the "Project".

B. In order to commence mining in the Expansion Area, Applicant must obtain a conditional use permit ("CUP"), Reclamation Plan ("RP") and Financial Assurance ("FA") to comply with Placer County and Yuba County requirements and the requirements of the Surface Mining and Reclamation Act of 1975, Cal. Public Resources Code §§ 2710 et seq. ("SMARA"). The permitting process will also require compliance with the California Environmental Quality Act, Cal. Public Resources Code §§ 21000 et seq. ("CEQA").

C. Pursuant to Section 2774.4 of SMARA, the California State Mining & Geology Board ("SMGB") has assumed lead agency powers from Yuba County for the administration and enforcement of SMARA except for permitting activities.

D. The Project is within the jurisdiction of Placer County for a CUP, RP, and FA; within the jurisdiction of Yuba County for a CUP; and within the jurisdiction of the SMGB for a RP and FA.

E. Because the Expansion Area is located in both Placer County and Yuba County, the questions arose which agency should be lead agency over the Project pursuant to both SMARA and CEQA.

F. Under CEQA Guidelines Section 15051(b), where two or more public agencies have jurisdiction over a project subject to CEQA review, the public agency "with the greatest responsibility for supervising or approving the project as a whole" shall be designated as the lead agency.

G. Where, as with this Project, a proposed surface mining operation is within the jurisdiction of two or more public agencies and mining is a permitted use within such agencies' jurisdiction, Section 2771 of SMARA allows for the designation of one of these public agencies to serve as the lead agency under SMARA for consideration of the project.

H. Yuba County has agreed with Placer County to designate Placer County as the CEQA and SMARA lead agency for the entire Project including designating Placer County as lead agency for purposes of the CUP portions located in Yuba County.

NOW THEREFORE, Placer County and SMGB resolve and agree that as follows:

1. **SMARA Lead Agency Responsibility.** In accordance with Section 2771 of SMARA, Placer County shall be the lead agency over the Project for purposes of SMARA. Thus, Placer County will make the decision for the entire Project as lead agency regarding the Reclamation Plan and Financial Assurances. In addition, Placer County shall be responsible for all future SMARA administrative, inspection, and enforcement activities for surface mining operations conducted by Applicant within the area encompassed by the Project.
2. **CEQA Lead Agency Responsibility.** In accordance with 14 CCR Section 15051(b), Placer County shall be the lead agency over the Project for purposes of CEQA. Placer County will prepare an Environmental Impact Report.
3. **Right of Review.** The Department of Conservation will retain its authorities pursuant to SMARA Section 2774(c) to review the Reclamation Plan and Financial Assurances prepared for the Project prior to final approval of those documents by Placer County.

IN WITNESS WHEREOF, the Placer County and SMGB have executed this Agreement effective as of August 3rd, 2004:

Placer County:

SMGB:

By: Harriet White

Name: Harriet White

Title: Chairman, Board of Supervisors

By: Allen M. Jones

Name: Allen M. Jones

Title: Chairman, SMGB

MEMORANDUM OF UNDERSTANDING
BETWEEN
PLACER COUNTY, CALIFORNIA AND
YUBA COUNTY, CALIFORNIA
REGARDING LEAD AGENCY DESIGNATION

This document constitutes an Agreement ("Agreement") between PLACER COUNTY, California and YUBA COUNTY, California.

RECITALS:

- A. CEMEX Construction Materials, L.P., as successor-in-interest to Automatic Aggregate Systems, Inc. (hereinafter referred to as "Applicant") currently operates a 436-acre sand and gravel mine ("Mine") located in Placer County which Applicant plans to expand to cover an additional 448 acres ("Expansion Area"). Of the Expansion Area, 177 acres are located within Yuba County, while 271 acres of the Expansion Area are located within Placer County. The planned expansion is referred to herein as the "Project."
- B. In order to commence mining in the Expansion Area, the Applicant must obtain a conditional use permit ("CUP"), Reclamation Plan ("RP"), and Financial Assurance ("FA") to comply with Placer County and Yuba County requirements and the requirements of the Surface Mining and Reclamation Act of 1975, Cal. Public Resources Code §§ 2710, et seq. ("SMARA"). The permitting process will also require compliance with the California Environmental Quality Act, Cal. Public Resources Code §§ 21000, et seq. ("CEQA").
- C. Pursuant to Section 2774.4 of SMARA, the California State Mining & Geology Board ("SMGB") has assumed lead agency functions from Yuba County regarding the review and approval of reclamation plans and financial assurances in Yuba County.
- D. The Project is within the jurisdiction of Placer County for a CUP, RP, and FA; within the jurisdiction of Yuba County for a CUP; and within the jurisdiction of the SMGB for a RP and FA.
- E. Because the Expansion Area is located in both Placer County and Yuba County, questions arose regarding which agency should be lead agency over the Project pursuant to both SMARA and CEQA.
- F. Under the CEQA Guidelines 14 CCR Section 15051(b), where two or more public agencies have jurisdiction over a project subject to CEQA review, the public agency "with the greatest responsibility for supervising or approving the project as a whole" shall be designated as the lead agency. Placer County has published a Draft Environmental Impact Report for the Project. The comment period for that Draft EIR closed on January 12, 2005.
- G. Where, as with this Project, a proposed surface mining operation is within the

jurisdiction of two or more public agencies and mining is a permitted use within such agencies' jurisdiction, Section 2771 of SMARA allows for the designation of one of these public agencies to serve as the lead agency under SMARA for consideration of the project.

H. On August 3, 2004 the SMGB and Placer County entered into an MOU whereby the SMGB agreed that Placer County would be the SMARA and CEQA lead agency for purposes of the RP and FA within Yuba County.

I. In November, 2004 Yuba County enacted a resource depletion fee of 15 cents per ton which applies to mining activity occurring in Yuba County.

NOW, THEREFORE, Placer County and Yuba County resolve and agree as follows:

1. **SMARA Lead Agency Responsibility.** Placer County shall be the lead agency for the Project for purposes of SMARA. In accordance with Section 2771 of SMARA, Placer County shall have sole and exclusive jurisdiction to issue approvals for the Project Reclamation Plan and Financial Assurances to the extent agreed to by the SMGB, and also in the event the SMGB's current jurisdiction in Yuba County ceases.
2. **CUP Issuing Authority.** Pursuant to Section 2771 of SMARA, Placer County shall have the authority to issue a CUP for the whole of the Project area, including both counties. The CUP shall be effective in both counties and the conditions of approval shall apply in both counties. Yuba County shall have the right to review, comment on and propose conditions prior to issuance of the CUP.
3. **CEQA Lead Agency Responsibility.** Placer County and Yuba County agree that, in accordance with CEQA Guidelines Section 15051(b), Placer County is the lead agency for purposes of the environmental review of the Project under CEQA.
4. **Yuba County CEQA Review.** The Counties agree that Yuba County shall have the right to review and comment on the CEQA documents for the Project as a CEQA responsible agency.
5. **Survey.** To the extent that the county line in the Project area needs to be surveyed, that shall be done at Applicant's cost and upon request of Yuba County.
6. **Resource Depletion Fee.** Yuba County shall directly administer and enforce the resource depletion fee legislation referred to in paragraph I, above. Applicant agrees to propose as a condition of its CUP and in language acceptable to Yuba County that in the event Yuba County reasonably determines that Applicant is at any time in default for payment of any amount due to Yuba County as a resource depletion fee as referred to in paragraph I, above, such default will constitute a violation of the CUP and Applicant shall cease all mining operations in Yuba County encompassed by the CUP forthwith. Any permit enforcement Action under this section shall be undertaken by the County of Yuba.

7. **Indemnification.** The applicant shall defend, indemnify, and hold harmless the County of Yuba and Placer, and its officers, agents, and employees, from any and all actions, lawsuits, claims, damages, or costs, including reasonable attorney's fees awarded by a Court, arising out of or relating to the processing and/or approval of the Project by Yuba or Placer County, except between Yuba or Placer County and the Applicant. The applicant shall, upon written request of Yuba or Placer County, pay or, at Yuba and Placer County's option, reimburse Yuba and Placer County for all costs for preparation of an administrative record required for any such action including the costs of transcription, County staff time, and duplication. Yuba and Placer County shall retain the right to elect to appear in and defend any such action on its own behalf regardless of any tender under this provision. This indemnification obligation is intended to include, but not be limited to, actions brought by third parties to invalidate any determination made by Yuba or Placer County under CEQA for the Project or any decisions made by either County relating to the approval of the Project.

8. Applicant is a party hereto.

IN WITNESS WHEREOF, Placer County and Yuba County have executed this Agreement as follows:

PLACER COUNTY:

By: _____

Name: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
COUNSEL FOR PLACER COUNTY**

By: _____

YUBA COUNTY:

By: _____

Name: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
COUNSEL FOR YUBA COUNTY**

By: _____

**CEMEX CONSTRUCTION MATERIALS, L.P.
BY ITS GENERAL PARTNER, CEMEX, INC.**

By: _____

Name: _____

Title: _____

Date: _____